



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date

June 30, 2016

To

Presiding Judges of the Superior Courts
Court Executive Officers of the Superior
Courts

From

Millicent Tidwell
Chief Operating Officer
Operations and Programs Division
Judicial Council of California

Subject

New Rules and Forms Implementing
Assembly Bill 900 in Guardianship
Proceedings¹

Action Requested

Please Review and Disseminate Broadly to
Judicial Officers and Court Staff Involved in
Probate Guardianship Proceedings

Contact

Diane Nunn, Director
Center for Families, Children & the Courts
415-865-7689 phone
diane.nunn@jud.ca.gov

Until January 1, 2016, the superior court's authority to appoint a guardian extended only to youth younger than 18 years of age. A guardianship terminated by operation of law on the ward's 18th birthday. Effective January 1, 2016, however, Assembly Bill 900 added section 1510.1 to the Probate Code to authorize the court to appoint a guardian of the person for a youth at least 18 but not yet 21 years of age or to extend an existing guardianship of the person beyond the ward's 18th birthday to allow the ward to apply or complete the application process for classification as a special immigrant juvenile (SIJ) under the federal Immigration and Nationality Act.

¹ We are sending this memorandum to court leaders so that the information is readily available. Please note that the memorandum will also be posted on the Judicial Resources Network website as a nonconfidential/nonprivileged document for judicial officers and court staff and disseminated for training purposes as needed.

As directed by AB 900 (Levine; Stats. 2015, ch. 694, § 3), the Judicial Council adopted rules and forms² effective July 1, 2016, to implement Probate Code section 1510.1.³ Consistent with the statutory text and the Legislature’s intent, these rules and forms do not distinguish guardianships of the person established or extended under section 1510.1’s authority from other guardianships of the person unless required by law to do so.

This memo provides information for judicial officers and court staff about the process for adjudicating a guardianship petition under AB 900 and the implementing rules and forms. It concludes with a brief overview of federal SIJ classification and the role of a state custody determination, including a guardianship of the person, in the SIJ process.⁴

Assembly Bill 900

As noted above, the superior court’s authority to appoint a guardian of the person has long extended only to minors, that is, persons younger than 18 years of age. (Fam. Code, §§ 3010, 3022, 6500–6501; see Prob. Code, §§ 1510, 1514(b).) All guardianships in effect on the ward’s 18th birthday have terminated by operation of law on that date. (Prob. Code, § 1600.) Effective January 1, 2016, however, Assembly Bill 900 authorizes the court, subject to the consent of the proposed ward, to appoint a guardian of the person for an unmarried person who is at least 18 but not yet 21 years of age “in connection with a petition to make the necessary findings regarding special immigrant juvenile status” under section 155(b) of the Code of Civil Procedure. (*Id.*, § 1510.1(a).) The law also authorizes the court to extend an existing guardianship of the person beyond the ward’s 18th birthday on the ward’s request or consent “for purposes of allowing the ward to complete the application process with the United States Citizenship and Immigration Services for classification as a special immigrant juvenile.” (*Id.*, § 1510.1(b).)

AB 900 extends access to the protections and benefits of a guardianship of the person to youth 18 to 20 years of age.⁵ The statutory text does not reflect any intent to create a new, separate type of guardianship, but rather to authorize the court to apply existing guardianship law to these older youth. Subdivisions (a) and (b) of section 1510.1 refer to a “guardian of the person” and a “guardianship of the person” without qualification. (Prob. Code, § 1510.1(a)–(b).) Subdivision (d) reinforces this interpretation by defining “child,” “minor,” and “ward,” for

² The council [adopted the rules and forms](#) on April 15, 2016.

³ Unless otherwise indicated, all unspecified statutory citations refer to the Probate Code. All unspecified rule citations refer to the California Rules of Court.

⁴ On June 27, 2016, Governor Brown signed Assembly Bill 1603 (Stats. 2016, ch. 25, § 1), which took effect immediately. This budget trailer bill includes legislative direction regarding the implementation of Assembly Bill 900 and Senate Bill 873 (Stats. 2014, ch. 685, § 1), previous legislation regarding special immigrant juvenile findings discussed later in this memorandum.

⁵ A guardianship of the estate terminates, as before, no later than the ward’s 18th birthday. Prob. Code, § 1600(a).

purposes of division 4 of the code, to include an unmarried person younger than 21 years of age who consents to the appointment of a guardian of the person or the extension of a guardianship after having reached 18 years of age.

An appointment under section 1510.1 confers the same powers and duties on the guardian of an 18- to 20-year-old ward as are conferred by the appointment of a guardian for a ward under 18 years of age. AB 900 did not amend any other provisions of the guardianship statutes to qualify or expand a guardian's powers, duties, or liabilities when the ward is 18 years of age or older.⁶ By authorizing the court to apply the existing guardianship statutes without amendment to these youth rather than enacting a separate statutory scheme, the Legislature indicated its intent that existing processes and substantive requirements would continue to apply to guardianships of wards 18 years of age and older. For example, a petitioner would still need to show, and the court would need to find, that appointment of a guardian of the person is necessary or convenient before ordering the appointment.⁷ Some of these provisions would not apply by their own terms to proposed wards 18 or older. For example, a petitioner seeking appointment under section 1510.1(a) would need to comply with the notice provisions in sections 1460 and 1511, but would not need to provide notice to "[a]ny person having legal custody of the proposed ward" under section 1511(b)(2), as no person would have legal custody of the proposed ward.⁸

The key difference between a guardianship of the person of a ward under 18 years of age and that of a ward 18 years of age or older lies not in the terms of the relationship itself, but in the conditions of its formation, modification, and termination. In addition to the conditions necessary for the establishment of any guardianship of the person, section 1510.1 requires that a proposed ward 18 or older give his or her consent to establish or extend a guardianship of the person. (Prob. Code, § 1510.1(a)–(b).) Furthermore, section 1510.1(c) provides that "[t]his section does not authorize the guardian to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law, including, but not limited to, decisions regarding the ward's medical treatment, education, or residence, without the ward's express consent."

⁶ AB 900 also made conforming amendments to exclude section 1510.1 from section 1490's direction to construe the term "guardian" to mean "conservator" when used to refer to an adult ward, as well as to sections 1600 and 1601 to provide for termination of a guardianship on the ward's 21st birthday or on petition by the ward. Stats. 2015, ch. 694, §§ 2, 4 & 5.

⁷ Prob. Code, § 1514(a). Section 1 of AB 900 emphasizes that a guardianship of the person may be necessary or convenient to assist undocumented youth who have been abused, neglected, or abandoned to recover from trauma or adjust to a new cultural context, language, and educational system. Stats. 2015, ch. 694, § 1. Whether a guardianship is necessary or convenient in a given case is for the court's decision based on the facts presented.

⁸ It seems that a petition under section 1510.1(b), to extend an existing guardianship of the person past a ward's 18th birthday, would need to be filed before the ward's 18th birthday. If filed later, the original guardianship would have terminated by operation of law and the petitioner would need to request appointment of a guardian under section 1510.1(a). Therefore, notice of a hearing on a petition to extend an existing guardianship would need to be given to a legal custodian.

The ward's consent is critical for the legitimacy of a guardianship established or extended under section 1510.1. The appointment of a guardian of the person for a minor suspends parental rights to the care, custody, and control of the ward and confers those rights on the guardian. When the ward is 18 or older, however, parental custodial rights and duties have generally expired.⁹ In the absence of judicial intervention, an 18- to 20-year-old youth holds authority to make life decisions independent of his or her parents' wishes. Therefore, unless the court finds that a proposed 18- to 20-year-old ward has diminished capacity—something not contemplated by AB 900—any decision-making authority held by the guardian must be freely conveyed from the ward himself or herself.

The consent requirements in section 1510.1(a) and (b) seem sufficient to protect the proposed ward's independence in this respect. The extent of the limit imposed by section 1510.1(c)'s additional language has therefore served as a source of some confusion. In developing rules and forms to implement AB 900, the Judicial Council's Probate and Mental Health Advisory Committee was guided in its interpretation by extensive comment from the bill's author and the leadership of both chambers of the Legislature as well as the bill's sponsors, Bet Tzedek Legal Services and Immigrant Legal Resource Center.

Rules and Forms Implementing AB 900

Effective July 1, 2016, the Judicial Council amended the California Rules of Court and updated applicable Judicial Council forms to implement AB 900. These rules and forms are intended to provide procedural guidance to judicial officers, court staff, and parties for filing, opposing, and adjudicating a petition for appointment or of extension of a guardianship of the person for a youth 18 to 20 years of age. Changes to the rules and forms were designed to reflect the intent of the Legislature: to extend the protections and benefits of a guardianship to eligible wards 18 to 20 years of age. The rules and forms do not therefore distinguish, except as required by statute, between cases involving wards under the age of 18 and those involving wards 18 and older but not yet 21 years of age. With the changes described below, these Judicial Council forms do not require further modification or enhancement to indicate that the scope of a guardianship of the person changes based on the age of the ward.

Because of the critical role played by the proposed ward's consent in creating the guardianship, the most significant changes to the rules and forms address the nature of the consent required and the mechanism for giving, modifying, and withdrawing that consent.

⁹ Under the Family Code, the court may only make a custody order during a child's minority. Fam. Code, § 3022. Cf. Fam Code, § 3901 (parental duty of support may extend, in certain circumstances, to a child's 19th birthday).

Forms

To incorporate wards 18 and older but not yet 21 years of age into the existing legal framework under which guardians of the person are appointed and overseen by the court, the council revised the *Petition for Appointment of Guardian of Minor* (form GC-210) to add a note indicating that section 1510.1(d) defines “child,” “minor,” and “ward” to include a youth 18 to 20 years of age. These terms should be understood throughout the form to apply to all (proposed) wards until their 21st birthdays. The council also added language to several items on the form to indicate that they do not apply to youth or wards 18 years of age or older. These include item 1b for requesting a guardianship of the estate, item 5 indicating the proposed guardian’s intent to adopt the ward, item 8 indicating that the petitioner need not request a finding that parental custody would be detrimental to the proposed ward, and item 12 regarding submitting a declaration under the Uniform Child Custody Jurisdiction and Enforcement Act.

The council added a check box to item 13 on the form to indicate that a *Petition for Special Immigrant Juvenile Findings* (form GC-220) is attached. In recognition of the age of the proposed wards and their statutory right to consent, the council also added to the end of the form a signature block for the proposed ward under a declaration of consent to the appointment of the guardian as well as to the guardian’s performance of the duties inherent in the guardian-ward relationship with a direction that the proposed ward sign the declaration. The council made analogous revisions to the *Petition for Appointment of Guardian of the Person* (form GC-210(P)).

To give wards approaching their 18th birthday access to the opportunity to extend their guardianships of the person, the council adopted *Petition to Extend Guardianship of the Person* (form GC-210(PE)) as a plain-language form for mandatory use. This new petition solicits information about the existing guardianship in item 5, requests the extension of that guardianship in item 7, and requires the ward’s consent at the end of the form.

The council also revised *Order Appointing Guardian of Minor* (form GC-240) so that it may be used to extend a guardianship of the person past a ward’s 18th birthday. Specific revisions include changing the form’s title to *Order Appointing Guardian or Extending Guardianship of the Person*, adding item 4 to permit the court to find that an extension of a guardianship of the person past the ward’s 18th birthday is necessary and convenient, and adding item 8c to allow the court to order the extension of a guardianship of the person past the ward’s 18th birthday, as authorized by section 1510.1(b), and to issue new *Letters of Guardianship*. The council retained item 13, which gives the court the opportunity to tailor the powers and duties of the guardian of a person of any age to meet the ward’s needs.¹⁰

¹⁰ See Prob. Code, §§ 2351(a), 2358.

Similar revisions to *Letters of Guardianship* (form GC-250) include the addition of item 2 for the clerk to indicate that the guardian's appointment has been extended. This item might not be necessary to implement the express statutory requirements, but if the original date of appointment is before the ward's 18th birthday, the guardian and the ward are likely to face circumstances in which they need documentation that the guardianship remains in force after the ward's 18th birthday. The council also added item 5 for the court to specify the date on which the guardianship terminates by operation of law. For a ward under 18 years of age, that date is his or her 18th birthday. For a ward 18 years of age or older, that date is his or her 21st birthday. (See Prob. Code, § 1600.)

Rules

The Judicial Council also adopted a new rule of court and amended several others to implement AB 900. First, the Judicial Council adopted rule 7.1002.5 to implement the consent requirements in section 1510.1. That section appears to require two different levels of consent. First, the youth must consent to the establishment or extension of the guardianship itself. (See Prob. Code, § 1510.1(a)–(b).) Rule 7.1002.5(b) and (c) conditions the court's appointment of a guardian of the person for a proposed ward 18 years of age or older or the extension of a guardianship past a ward's 18th birthday on the proposed ward's signed declaration of consent on the appropriate petition form.

Second, the statutory language withholding from the guardian the authority "to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law . . . without the ward's express consent" appears to require the ward's further consent to the guardian's performance of his or her legal duties for the benefit of the ward. (Prob. Code, § 1510.1(c).) Rule 7.1002.5(b) and (c) therefore also requires that the ward's consent to the guardian's performance of the duties inherent in the relationship be expressly declared on the petition. As suggested by the bill sponsors, rule 7.1002.5(d) further implements section 1510.1(c)'s limit on the guardian's authority by clarifying that it applies only in the event of a dispute and that the limit will not require the guardian to breach a fiduciary duty to the ward. Finally, rule 7.1002.5(e) specifies the mechanisms through which the ward may withdraw or modify his or her consent.

The council also amended several other guardianship rules, including rule 7.1004(b), to conform to AB 900's amendments to sections 1600 and 1601 of the Probate Code regarding termination of guardianships of the person by operation of law and on petition of the ward, as well as to limit the persons to whom notice of a hearing to terminate a guardianship of a ward 18 years of age or older must be given; rule 7.1013, by adding subdivision (g) to relieve the guardian of a ward 18 years of age or older from giving notice of a change of residence to the ward's parents; and rule 7.1020(b) and (e), so that this rule also applies to petitions to extend a guardianship under section 1510.1(b).

Background

SIJ status was created by federal law in 1990 in response to concerns that the health, safety, and welfare of abused, neglected, or abandoned immigrant children under the protection of state court child custody and child welfare orders were being placed in jeopardy by the risk that they would be deported when they aged out of state court jurisdiction. To mitigate that risk and permit these children to remain in safe, stable, court-ordered placements in the United States, Congress amended the Immigration and Nationality Act to include these children within the class of “special immigrants” who are eligible for admission to the United States and authorized to apply for adjustment to lawful permanent resident status.¹¹

The INA currently defines an SIJ as an immigrant child¹² present in the United States (1) “who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States”; (2) whose reunification with one or both of his or her parents is not viable because of abuse, neglect, abandonment, or a similar basis under state law; and (3) for whom it has been determined by a juvenile court or authorized administrative agency that it would not be in his or her best interest to be returned to his or her country of nationality or last habitual residence.¹³ California case law has recognized that, for SIJ purposes, a child with a guardian of the person is placed in the custody of an individual appointed by the court.¹⁴

To apply for federal SIJ classification, a child must obtain and attach to his or her application a “juvenile court order” finding that he or she satisfies each of the three elements of the statutory definition.¹⁵ California Senate Bill 873 (Stats. 2014, ch. 685, § 1) affirmed superior court authority to make the SIJ findings in child custody and child welfare proceedings, including probate guardianship proceedings.

MT/DN/CS/kt

Attachment

cc: Members of the Judicial Council
Martin Hoshino, Administrative Director, Judicial Council
Jody Patel, Chief of Staff, Judicial Council
Diane Nunn, Director, Center for Families, Children & the Courts, Judicial Council

¹¹ Immigration Act of 1990 (Pub.L. No. 101-649 (Nov. 29, 1990) 104 Stat. 4978, § 153).

¹² For purposes of the INA, a child is an unmarried person under 21 years old. 8 U.S.C. § 1101(b)(1).

¹³ 8 U.S.C. § 1101(a)(27)(J). The Trafficking Victims Protection Reauthorization Act of 2008 expanded the definition of an SIJ to include a child in the custody of an individual appointed by the court. Pub.L. No. 110-457, § 235(d)(1) (Dec. 23, 2008), 122 Stat. 5044, 5079.

¹⁴ *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621.

¹⁵ See 8 C.F.R. § 204.11(d)(2).

RELEVANT LEGAL AUTHORITIES

A. California Statutes

1. Sen. Bill 873 (Stats. 2014, ch. 685) §§ 1–2, 12–13
2. Assem. Bill 900 (Stats. 2015, ch. 694) (adding Prob. Code, § 1510.1)
3. Assem. Bill 1603 (Stats. 2016, ch. 25, § 1) (amending Code Civ. Proc., § 155)
4. Code Civ. Proc., § 155 (special immigrant juvenile findings)
5. Evid. Code, § 757 (interpreter in proceeding to request SIJ findings)
6. Fam. Code, §§ 200 (jurisdiction), 3000–3465 (child custody), 6200–6409 (domestic violence prevention), 7500–7895 (parent-child relationship), 8500–9212 (adoption)
7. Prob. Code, §§ 1400–1490, 1500–1611, 2100–2360 (guardianships)
8. Welf. & Inst. Code, §§ 200–987 (juvenile court law), 10609.97 (child welfare and SIJ), 13300–13302 (legal representation)

B. Federal Statutes

1. Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.
2. 8 U.S.C. § 1101(a)(27)(J) (definition of special immigrant juvenile)
3. 8 U.S.C. § 1154(a)(1)(G)(i) (petition process for SIJ classification)
4. 8 U.S.C. § 1153(b)(4) (allocation of special immigrant visas)
5. 8 U.S.C. § 1182 (grounds for inadmissibility)
6. 8 U.S.C. § 1232 (TVPRA 2008)
7. 8 U.S.C. § 1255(h) (adjustment of status to lawful permanent resident)
8. 8 U.S.C. § 1421 (naturalization authority)

C. Federal Regulations

1. 8 C.F.R. § 103.2 (submission and adjudication of benefit requests)
2. 8 C.F.R. § 103.3 (denials, appeals, and precedent decisions)
3. 8 C.F.R. § 103.5 (reopening and reconsideration)
4. 8 C.F.R. § 103.7 (fees)
5. 8 C.F.R. § 204.11 (special immigrant juvenile classification)
6. 8 C.F.R. § 205.1 (revocation of approval)
7. 8 C.F.R. § 245.1 (adjustment of status to lawful permanent resident)
8. Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978 (Sept. 6, 2011)
9. *U.S. Citizenship and Immigration Services, Special Immigrant Juvenile Status: Information for Juvenile Courts*

D. California Cases

Published Cases

1. *In re Jose C.* (2009) 45 Cal.4th 534 (state-federal relations; immigration)
2. *Bianka M. v. Superior Court* (2016) 245 Cal.App.4th 406 (one-parent SIJ in family law custody proceeding), review granted on May 25, 2016, S233757.
3. *In re Christian H.* (2015) 238 Cal.App.4th 1085 (SIJ findings and delinquency disposition must not be contradictory)
4. *Eddie E. v. Superior Court* (2015) 234 Cal.App.4th 319 (one-parent SIJ in delinquency)
5. *In re Israel O.* (2015) 233 Cal.App.4th 279 (one-parent SIJ in delinquency)
6. *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340 (SIJ in delinquency)
7. *Eddie E. v. Superior Court* (2013) 223 Cal.App.4th 622 (SIJ in delinquency)
8. *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621 (SIJ in probate)
9. *In re Y.M.* (2012) 207 Cal.App.4th 892 (SIJ in dependency)
10. *In re Nelson B.* (2013) 215 Cal.App.4th 1121 (UCCJEA and SIJ)

Unpublished Cases

11. *In re Y.V.* (Jan. 14, 2016, A142355) 2016 WL 193369 [not published; SIJ findings and delinquency disposition]
12. *D.L. v. Superior Court* (May 5, 2015, A144960) [not published; CA statutory definitions of abandonment do not require willfulness or intent on part of parent]
13. *Bryan S. v. Superior Court* (Mar. 12, 2015, B261955) 2015 WL 1138721 [not published; one-parent SIJ in family law custody proceeding]
14. *In re J.C.* (Feb. 6, 2015, C068667) 2015 WL 513399 [not published; one-parent SIJ in delinquency]
15. *In re Christian C.* (Jan. 22, 2015, A142082) 2015 WL 294675 [not published; one-parent SIJ in delinquency]
16. *In re Aaron R.* (Sept. 28, 2012, A133597) 2012 WL 4466160 [not published; no abuse of discretion to terminate wardship of 18-year-old youth and decline to make SIJ findings despite likelihood that he would be deported]

E. Federal Cases

1. *Arizona v. United States* (2012) 132 S.Ct. 2492 [state-federal relations; immigration]
2. *Printz v. United States* (1997) 521 U.S. 898 [state-federal relations; immigration]
3. *De Canas v. Bica* (1976) 424 U.S. 351 [state-federal relations; immigration]
4. *Testa v. Katt* (1947) 330 U.S. 386 [state-federal relations; judicial power]
5. *Holmgren v. United States* (1910) 217 U.S. 509 [state-federal relations; immigration; judicial power]
6. *Garcia v. Holder* (9th Cir. 2011) 659 F.3d 1261 [SIJ classification]
7. *Gao v. Jenifer* (6th Cir. 1999) 185 F.3d 548 [SIJ classification]

8. *Yeboah v. United States Dep't of Justice* (3d Cir. 2003) 345 F.3d 216 [SIJ classification]
9. *Perez-Olano v. Gonzalez* (C.D. Cal. 2008) 248 F.R.D. 248 [SIJ; state-federal relations]
10. *In re Perez-Quintanilla* (AAO 2007) A97 383 010 [specific consent; retention of juvenile court jurisdiction] 2007 WL 2410060

F. USCIS Policy Memoranda

1. *Léon Rodríguez, Response to Recommendations on Special Immigrant Juvenile Adjudications* (USCIS, Apr. 19, 2016)
2. *USCIS, Policy Memorandum: Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement* (June 25, 2015)
3. *Lori Scialabba, Response to Recommendation 47, Special Immigrant Juvenile Adjudications: An Opportunity for Adoption of Best Practices* (USCIS July 13, 2011)
4. *USCIS, Policy Memorandum: Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement* (Apr. 4, 2011) 2011 WL 1335719
5. *Donald Neufeld & Pearl Chang, Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (USCIS Mar. 24, 2009) 2009 WL 1028912
6. *William R. Yates, Memorandum #3: Field Guidance on Special Immigrant Juvenile Status Petitions* (USCIS May 27, 2004) 2004 WL 1638268

G. Cases from Other States

1. *In re Mario S.* (N.Y. Fam. Ct. 2012) 38 Misc.3d 444, 954 N.Y.S.2d 843 (approving one-parent SIJ)
2. *In re Erick M.* (Neb. 2012) 284 Neb. 340 [820 N.W.2d 639] (rejecting one-parent SIJ)